

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN JOSEPH ROMERO, )  
Petitioner, ) No. C 05-5066 CRB (PR)  
vs. ) ORDER OF DISMISSAL  
CHIEF OF CORRECTION, et al., ) (Doc # 2)  
Respondent(s). )

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Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging a recent conviction and sentence from the Superior Court of the State of California in and for the County of Santa Clara.

Prisoners in state custody who wish to challenge collaterally in federal habeas corpus proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c). Petitioner has not done so. He has not presented the Supreme Court of California with an opportunity to consider and rule on his claims. See O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (state's highest court must be given opportunity to rule on claims even if review is discretionary); Larche v. Simons, 53 F.3d 1068, 1071-72 (9th Cir. 1995)

1 (Supreme Court of California must be given at least one opportunity to review  
2 state prisoners' federal claims). The petition for a writ of habeas corpus therefore  
3 is DISMISSED without prejudice to refiling after state judicial remedies are  
4 exhausted.

5 The clerk shall close the file and terminate all pending motions (see, e.g.,  
6 docs # 2) as moot.

7 SO ORDERED.

8 DATED: December 13, 2005

  
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CHARLES R. BREYER  
United States District Judge

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